

1 RICHARD L. PEEL, ESQ.
UTAH Bar No. 6430
2 PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
3 Henderson, Nevada 89074-6571
Telephone: (702) 990-7272
4 Fax: (702) 990-7273
rpeel@peelbrimley.com
5 Attorneys for Action Target, Inc.

6
7
8
9
10 **IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY**
STATE OF UTAH, UTAH COUNTY DEPARTMENT

11
12 ACTION TARGET, INC., a Delaware
Corporation,

13
14 Plaintiff,

15 v.

16 PHOENIX RBT SOLUTIONS, LLC, an Idaho
limited liability company; DOES I through X;
17 ROE CORPORATIONS XI through XX; and
18 BOE INSURANCE AND BONDING
COMPANIES XXI through XXX.

19 Defendants.
20

COMPLAINT
[Tier 3]

Case No. 140400407

Judge Thomas Low

21 ACTION TARGET, INC. ("Action Target"), by and through its attorney of record,
22 Richard L. Peel, of the law firm of Peel Brimley LLP, as and for its Complaint against the above-
23 named defendant complains, avers and alleges as follows:

24 **THE PARTIES**

25 1. Action Target is and was at all times relevant to this action a corporation organized
26 under the laws of the State of Delaware with its principal place of business in Provo, Utah.

27 2. Action Target is informed and believes and therefore alleges that Defendant,
28

Exhibit 2 to Defendant's
Notice of Removal

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273

PEEL BRIMLEY LLP
 3333 E. SERENE AVENUE, STE. 200
 HENDERSON, NEVADA 89074
 (702) 990-7272 ♦ FAX (702) 990-7273

1 PHOENIX RBT SOLUTIONS, LLC (hereinafter "Phoenix RBT"), is and was at all times
 2 relevant to this action an Idaho limited liability company.

3 3. Action Target does not know the true names of the individuals, corporations,
 4 partnerships and entities sued and identified in fictitious names as DOES I through X; ROE
 5 CORPORATIONS XI through XX; and BOE INSURANCE AND BONDING COMPANIES
 6 XXI through XXX, Action Target alleges that such Defendants are responsible for damages
 7 suffered by Action Target more fully discussed in the claims for relief and causes of action set
 8 forth below. Action Target will request leave of this Honorable Court to amend this Complaint to
 9 show the true names and capacities of each such fictitious Defendant when Action Target
 10 discovers such information.

11 JURISDICTIONAL ALLEGATIONS

12 4. This Court has jurisdiction over the parties and claims alleged herein pursuant to
 13 Utah Code §§ 78A-5-102(1) and 78B-3-205(1).

14 5. Venue is proper in this Court pursuant to Utah Code §§ 78B-3-304(2) and 78B-3-
 15 307(3).

16 6. The damages sought and alleged herein qualify this case as a "Tier 3" case under
 17 the Utah Rules of Civil Procedure.

18 GENERAL ALLEGATIONS

19 7. On or about May 28, 2013, Action Target entered into a written agreement (the
 20 "Agreement") with Phoenix RBT whereby Action Target agreed to furnish certain labor,
 21 materials and equipment ("Work") to the Camp Sullivan indoor shooting range in Kabul,
 22 Afghanistan (the "Project") for the sum of \$1,251,030.00.

23 8. Pursuant to the Agreement, Phoenix RBT agreed to pay for the Work by way of
 24 three installment payments to Action Target as follows: 25% down payment; 50% at pre-
 25 shipment; and the final 25% to be paid upon completion of the Work.

26 9. Subsequent to signing the Agreement, Phoenix RBT directed Action Target to
 27 perform extra labor on the Project in the amount of \$211,820.57, for a total contract value under
 28 the Agreement of \$1,462,580.57.

1 10. To date, Phoenix RBT has only paid Action Target the sum of \$988,243.07, leaving
2 an outstanding balance of \$474,607.50, exclusive of attorneys' fees, costs and interest (the
3 "Outstanding Balance").

4 **FIRST CAUSE OF ACTION**
5 **(Breach of Contract)**

6 11. Action Target repeats and realleges each and every allegation contained in the
7 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as
8 follows:

9 12. Action Target and Phoenix entered into the Agreement whereby Phoenix agreed to
10 pay for the Work Action Target furnished to the Project.

11 13. Action Target has fully performed its Work required of it under the Agreement and
12 has fully complied with its duties and obligations under the Agreement.

13 12. Phoenix RBT has breached the terms and conditions of the Agreement by failing
14 to pay the Outstanding Balance.

15 13. As a result of Phoenix RBT's breach of the Agreement, Action Target has been
16 damaged in an amount not less than \$474,607.50 for which Action Target is entitled to judgment
17 plus interest.

18 14. Action Target has been required to engage the services of an attorney to prosecute
19 its claims against Phoenix RBT, and Action Target is entitled to recover its reasonable costs,
20 attorneys' fees and interest therefore.

21 **SECOND CAUSE OF ACTION**
22 **(Unjust Enrichment or Alternatively Quantum Meruit)**

23 15. Action Target repeats and realleges each and every allegation contained in the
24 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as
25 follows:

26 16. This cause of action is being pled in the alternative to Action Target's breach of
27 contract cause of action against Phoenix RBT.

28 17. Action Target has fully furnished its Work to the Project and performed its duties
and obligations under the Agreement, thus conferring a benefit on Phoenix RBT.

1 18. Phoenix RBT has received, accepted, acknowledged, and benefited from the Work
2 performed by Action Target.

3 19. Action Target has demanded that Phoenix RBT compensate it for the Work
4 performed pursuant to the Agreement.

5 20. To date, Phoenix RBT has failed, neglected, and/or refused to fully compensate
6 Action Target for the Work performed.

7 21. Phoenix RBT has been unjustly enriched, to the detriment of Action Target.

8 22. Action Target has been damaged in an amount no less than \$474,607.50 for which
9 Action Target is entitled to judgment plus interest.

10 23. Action Target has been required to engage the services of attorneys to pursue this
11 cause of action, and Action Target is entitled to recover its reasonable costs, attorney's fees and
12 interest therefor.

13 **WHEREFORE**, Action Target prays that this Honorable Court:

14 1. Enter judgment against Defendants, and each of them, jointly and severally, in an
15 amount no less than \$474,607.50;

16 2. Enter judgment against Defendants, and each of them, jointly and severally, for
17 Action Target's reasonable costs and attorneys' fees incurred in pursuing its claims against them
18 as well as an award of interest thereon;

19 3. Enter judgment awarding Action Target such other and further relief as this
20 Honorable Court deems just and proper in the premises.

21 DATED this 19th day of March, 2014.

22 **PEEL BRIMLEY, LLP**

23
24 /s/Richard L. Peel
25 RICHARD L. PEEL, ESQ.
26 Utah Bar No.6430
27 3333 E. Serene Avenue, Suite 200
28 Henderson, Nevada 89074-6571
Attorneys for Action Target, Inc.

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273